



17719 Mr. Riedinger

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO:

B-201784

April 9, 1981

Entitled to Army Retirement Benefits

Chief Warrant Officer Peter Hertli, USA
294-38-7425
WOSC 81-1
63d Stu Co, 6th Bn, 1st Avn Bde
Fort Rucker, Alabama 35362

Dear Mr. Hertli:

Reference is made to your letter of December 10, 1980, with enclosures, in which you request information concerning your status in the United States Army if you participate in the social security system of Switzerland.

You say that you are a naturalized citizen of the United States, having immigrated from Switzerland, and are presently a Chief Warrant Officer in the regular component of the United States Army. You say further that before you came to the United States you worked for five years in Switzerland, and as a result qualified for Swiss social security benefits. However, you indicate that in order for you to receive benefits under that system at age 65, you would be required to make nominal contributions to the system between now and then.

Based on the foregoing, you ask the following questions:

"(1) Am I authorized to participate in the Swiss social security system?

"(2) Will my participation in the Swiss social security system effect my entitlement to Army retirement benefits?

"(3) I will have to deal with a Swiss consulate. Do I have to brief Army authorities on my dealings with Swiss consular authorities?"

We are not aware of any prohibition to your participation in this system. However, the receipt of benefits from the Swiss Government may effect your entitlement to active duty and retired pay from the U.S. Army.

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B-201784

A decision of the Comptroller General is not being rendered at your request on the questions presented; however, the following comments and references may be of assistance to you.

Article 1, section 9, clause 8 of the United States Constitution prohibits the receipt of an emolument from a foreign government by any person who holds an office of profit or trust under the United States without the consent of Congress. Retired Regular officers of the military services are considered to hold such office. See 53 Comp. Gen. 753 (1974) and authorities cited therein; copy enclosed.

It would appear that from the material enclosed with your letter that the social security benefits in question are payable from the public funds of the Swiss Government. If that is the case, then it would appear that in order to receive those benefits as a retired member of the Regular Army, the consent of Congress may be required. See 53 Comp. Gen. 753 (1974).

In this regard, we held in 37 Comp. Gen. 138 (1957), that an individual who was appointed to an office under the United States could not receive a World War II pension from the British Government and compensation from the United States without the consent of Congress.

Consent of the Congress has been granted in certain circumstances and under certain conditions for retired members of the uniformed services to accept employment and compensation therefore from foreign Governments. See section 509 of Public Law 95-105, August 17, 1977, 37 U.S.C. § 801, note. However, it does not appear that the receipts of benefits, such as Swiss social security, could be considered under that provision.

Additionally, if you were to reacquire your Swiss citizenship, your right to retired pay may be forfeited. See 41 Comp. Gen. 715 (1962) and 44 Comp. Gen. 51 (1964), copies enclosed.

B-201784

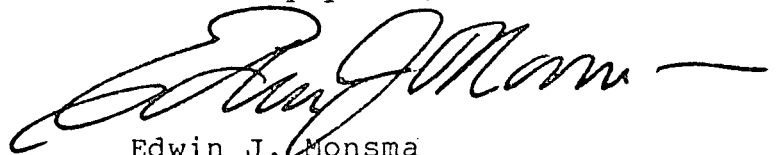
Of possible interest to you, in connection with social security credits from both the United States and Switzerland is information that an agreement was entered into by the countries on November 1, 1980. Our information concerning this is limited to the fact that it was entered into by the United States pursuant to section 317 of Public Law 95-216, approved December 20, 1977, 91 Stat. 1509, 1538.

Therefore, in limited response to your questions one and two, while there is nothing in the law which would prohibit you from making contributions to the Swiss social security system, if it is your object to receive full social security benefits from both systems, the specific consent of Congress may still be required. Should that be the case, and if the Swiss benefits are received without that approval, the Comptroller General has held that while a retired service member retains his military status and continues to be entitled to receive military retired pay, an amount equal to the emolument received from the foreign government is to be withheld from that pay. See B-178538, October 13, 1977, copy enclosed.

With regard to question three, although you are a member of the Regular Army, we are not aware of any law prohibiting the described dealings you might have with the Swiss consulate as a private citizen of the United States. However, this question would be more appropriately answered by the Army.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Edwin J. Monsma', followed by a horizontal line.

Edwin J. Monsma
Assistant General Counsel

Enclosures - 4